IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 267 OF 2004

Shri Balasaheb Parshuram Indulkar
through his legal heirs -
Miss Swati Balasaheb Indulkar & ors. ... Appellant

V/s

Kolhapur Municipal Corporation,
Kolhapur, through the Commissioner. ... Respondents

Mr. Ganesh gole for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 7TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the 3rd Ad-hoc Additional District Judge, Kolhapur, dated 11.12.2003 dismissing the appeal and confirming the order passed by the 5th Joint Civil Judge, Jr. Divn., Kolhapur, dismissing the suit for perpetual injunction simplicitor against the defendant Corporation.

2. Heard the learned counsel for the appellant.

3. It is the plaintiff’s case that since 1990 he has

installed his cabin admeasuring 5 x 7 sq.fts. on the cross roads at 11th Lane of Rajarampuri area and he has been paying rent to the defendant Corporation. However, on 25.4.1997 some persons from the Corporation threatened to remove his suit cabin though no obstruction was caused to the traffic and hence the suit was filed for perpetual injunction. The defendant resisted the suit inter-alia submitting that the cabin structure was unauthroized. It was denied that the cabin was standing since the year 1990. Moreover, it was submitted that it was encroachment upon the road and causing obstruction to the traffic and hence the notice under Sec. 487 of the Bombay Provincial Municipal Corporation Act, 1949 came to be issued.

The suit was adjudicated on merits and the learned Trial Judge came to the conclusion that there was no merits in the plaintiff’s case and, as such, it was dismissed.

The appeal was carried to the District Court, Kolhapur. The learned Addl. District Judge endorsed to the findings recorded by the learned Trial Judge. Hence the second appeal.

4. At the outset, it may be noted that there is

absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that, since the Corporation has accepted the rent, an obligation is created between the parties and action sought to be made against the appellant is illegal and hence he should be protected by perpetual injunction. In my considered view, there is absolutely no legal obligation created in favour of the appellant only because the defendants have accepted the rent which was due to the physical occupation and utilization of the structure, however, it is needless to mention that when notice under Sec. 487 of the Bombay Provincial Municipal Corporation Act, 1949 is issued and when it is shown that this notice is not illegal, no right is created in favour of the appellant to remain in the property as it is against the public insterest and, as such, the appeal deserves to be dismissed. I am satisfied that both the Courts below have rightly dismissed the contentions raised on behalf of the appellant and, hence it would brook no interference.

5. In the result, the appeal stands dismissed. However, the appellant is allowed to carry on the business for the period till 1.10.2005. He shall vacate the premises on or before 1.10.2005 on condition that he

shall furnish undertaking to this Court within four weeks from today to that effect. Consequently, the Civil Application No. 266 of 2004 also stands dismissed.

(P.V. Kakade, J.)